IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 483 OF 2003.

Shri Prakash Vasuideo Deodhar ....

Petitioner.

V/s

The State of Maharashtra & Anr..... ... Respondents.

Mr.S. M. Kamble for the petitioner.

Mr.G. N. Gawande, AGP for the State.

CORAM: R.M.S. KHANDEPARKAR, J.

9-12-2004

PC:

Heard the learned advocates for the parties. The petitioner has challenged the order passed by the Land Acquisition Officer rejecting the application under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said act") on the ground that the same was filed beyond period of limitation prescribed for filing of such application under section 18 of the said act. The contention of the petitioner is that the petitioner was never served with the notice under section 12(2) of the said act and came to know about the the land acquisition proceedings only on 11.12.2002 and therefore the application being filed on 21.1.2003 the same was within period of limitation. The

respondents on the other hand have filed an affidavit disclosing that the notice under section 12(2) was affixed on the door of the petitioner as when the Talathi went to serve the notice the petitioner was not available at the residence nor there was any adult member available to accept the said notice. Undisputedly the petitioner has collected the compensation on 12.12.2002.

2. Referring to one of the affidavits filed by one Prakash Joshi it was sought to be contended that the deponent has clarified that the Talathi who had approached the residence of the petitioner on 24.10.2002 had in fact approached the said deponent with a request that the notice issued to the petitioner might be accepted by the said deponent as there was no person available to accept the said notice. In view of the said statement contention on behalf of the respondents about affixing of he notice is sought to be disputed. Irrespective of the fact that the statement of the deponent Shri Prakash Joshi is not sufficient to dispute or dislodge the presumption arising from the acts performed by an officer in the course of performance of his official duties as the said presumption arises in terms of section 114 of the Evidence Act, besides the deponent nowhere discloses that the report of the Talathi to the effect that the notice was affixed to the door of the petitioner was false or that no such notice was ever affixed to the door of the petitioner's house, the contention of the petitioner in that regard can not be accepted. Once Talathi's report discloses that the notice was duly affixed on the door of the residence of the petitioner, it has to be considered as valid service of notice in terms of the provisions of section 45 of the said Act. The learned advocate for the petitioner sought to draw the attention to the provisions of Civil Procedure Code in relation to

service of summons. However it is well settled that the provisions of Civil Procedure Code are not at all applicable to the proceedings under the Land Acquisition Act before the stage of reference being made under section 18 to the Reference Court. That being so, these provisions will have no application in the case of service of notice under section 12(2) of the said act. Once records apparently disclose that the notice was served upon the petitioner on 24.10.2002 by affixation of the said notice on the door of the residence of the petitioner, the petitioner was required to file a Reference Application under section 18 within six weeks from 24.10.2002. Admittedly the application was not filed within the said period. It was also sought to be contended that the Collector or the Land Acquisition Officer could have condoned the delay in facts and circumstances of the case. It is also well settled that the Collector entertaining the application under section 18 of the said act is not a Court and provisions of Limitation Act are not applicable to the said authority and therefore the concerned authority has no power to condone the delay. That being so, no fault can be found with the impugned order passed by award rejecting the application filed by the petitioner in reference under section 18 of the said Act. Hence revision application is rejected.